

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

JOHN DOE 1 and JANE DOE 1, in their own capacity and as parent of CHILD DOE 1,)
JOHN DOE 2 and JANE DOE 2, in their own capacity and as parent of CHILD DOE 2,)
JOHN DOE 3 and JANE DOE 3, in their own capacity and as parent of CHILD DOE 3,)
JOHN DOE 4 and JANE DOE 4, in their own capacity and as parent of CHILD DOE 4)
JOHN DOE 5 and JANE DOE 5, in their own capacity and as parent of CHILD DOE 5 and on behalf of those similarly situated,)
Plaintiffs)
v.)
UPPER SAINT CLAIR SCHOOL DISTRICT, a Pennsylvania governmental entity, PHILLIP J.)
ELIAS, DAPHNA GANS, BARBARA L. BOLAS,)
PATRICK A. HEWITT, LOUIS P. MAFRICE, JR.,)
MICHAEL R. MASCARO, ANGELA B.)
PETERSEN, JENNIFER A. SCHNORE,)
DANIELLE Z. WETZEL, all individual elected officials sued in their official capacity as members)
of the UPPER SAINT CLAIR SCHOOL)
DISTRICT BOARD OF DIRECTORS, a Pennsylvania elected legislative body,)
Defendants.)

EMERGENCY MOTION FOR 1) TEMPORARY RESTRAINING ORDER; 2) ORDER RESTRAINING THE SCHOOL BOARD OF THE UPPER SAINT CLAIR SCHOOL DISTRICT AND THE BOARD MEMBERS FROM VIOLATING THE AMERICANS WITH DISABILITIES ACT, AND SECTION 504 OF THE REHABILITATION ACT; AND 3) ORDER TO SHOW CAUSE WHY A PRELIMINARY INJUNCTION SHOULD NOT ISSUE

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AND NOW come above-named Plaintiffs, by and through their counsel Kenneth R. Behrend and the law firm of the Behrend Law Group, LLC, and move this Court for the following:

1. Plaintiffs herein allege that the Upper Saint Clair School Board is going to permit optional masking in the School District building starting on January 24, 2021.
2. By permitting optional masking, the School Board is causing irreparable harm to medically fragile disabled children who are students in the School District.
3. Universal masking is the keystone of the layered approach to protection from the spread of infection caused by COVID-19.
4. The School Board's removal of the protections afforded by universal mask wearing will result in discriminatory conduct towards the medically fragile disabled students in the District, as well as needlessly exposes them to increased risk of illness, or even death, as a result of infection caused by COVID-19.
5. Plaintiffs further allege that Defendants refusal to make reasonable accommodations necessary to allow the disabled children, and those similarly situated, to safely access the school buildings and thus have equal access to education is in direct conflict with the express requirements of the Americans with Disabilities Act ("ADA"), which Congress created to serve the strong public interest in seeing persons with disabilities treated equally and fairly by society.
6. Plaintiffs herein request this Court issue a Temporary Restraining Order by January 21, 2022 to protect Plaintiffs' children from the increased risk of infection by COVID-19 caused by the removal of the universal mask mandate and to permit continued access to the school buildings by the medically fragile disabled children.
7. Without the issuance of the requested Temporary Restraining Order by January 21, 2022, Plaintiffs' children will suffer immediate and irreparable harm.
8. Plaintiffs herein further request an Order granting their Ex-Parte Application for: 1)

a temporary restraining order; 2) an order restraining the School Board of the Upper Saint Clair School District from Violating the Americans with Disabilities Act, and Section 504 of the Rehabilitation Act; and 3) an order to show cause why a preliminary injunction should not issue. The legal and factual support for this motion is contained in the accompanying Memorandum of Law. A proposed order is filed herewith.

WHEREFORE, for the forgoing reasons, and to avoid the immediate and irreparable harm which will befall Plaintiff children should the school district be permitted to go forward with optional masking, Plaintiffs respectfully request this Court grant Plaintiffs' request for a Temporary Restraining Order on or before January 21, 2022.

Date: January 19, 2022

Respectfully submitted,

Behrend Law Group, LLC

/s/ *Kenneth R. Behrend*

Kenneth R. Behrend

Counsel for Plaintiffs

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